COM/GFB/hkr **ALTERNATE DRAFT** **Agenda ID #2162**
Ratesetting
5/8/2003 Item 10a

Decision **ALTERNATE DECISION OF COMMISSIONER BROWN**
(Mailed 4/28/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060.	Rulemaking 02-01-011 (Filed January 9, 2002)

ORDER GRANTING PETITION TO MODIFY

By this order we grant the Petition to Modify filed on November 18, 2002, by San Diego Gas & Electric Company (SDG&E). By its Petition, SDG&E seeks clarification of whether Decision (D.) 02-11-022 (Decision) exempts 80 megawatts (MW) of United States Navy load (Navy Load) from the components of the direct access cost responsibility surcharge (DA CRS).

I. Position of SDG&E

As a basis for its Petition, SDG&E refers to a discussion in the Decision, relating to the treatment of 80 MW of Navy Load for purposes of determining the effects on DA CRS provisions. As noted in the Decision, the U.S. Navy began to receive power through a special contract with an energy supplier obtained via the Western Area Power Administration (WAPA) in March 2001 and this load, representing 80 MW of capacity, was not included in the SDG&E requirements provided to Department of Water Resources (DWR) for modeling purposes.[1]

[1] Exh. 54, Ch II, p. 12.

The Decision concluded that because DWR did not undertake procurement for this 80 MW of U.S. Navy's load, that load "should not be subject to the DA CRS applicable to SDG&E."[2]

SDG&E argues that the text and the ordering paragraphs of the Decision contain inconsistent language. The Decision adopts a DA CRS composed of the DWR bond charge, the DWR power charge covering procurement costs between September 21, 2001 and December 31, 2002, the DWR power charge for prospective 2003 procurement costs and a separate charge covering ongoing above-market utility-retained-generation (URG) costs (Ordering Paragraph No. 2). The ordering paragraphs of the Decision set forth the categories of direct access (DA) customers responsible for each of these charges. The DWR bond charge applies to all DA customers except customers that took DA service continuously both before and since February 7, 2001 (Ordering Paragraph No. 4). The DWR power charge applies to DA customers that took bundled service on or after February 1, 2001 (Ordering Paragraph No. 13). The URG-related component of the DA CRS applies to all DA customers irrespective of the date the customers began to take DA service (Ordering Paragraph No. 15). Pursuant to these ordering paragraphs, SDG&E believes that each of the DA CRS elements would apply to the Navy Load, which was served through bundled service through the end of February 2001.

SDG&E points out that the text of the Decision states that the Navy Load is excluded from the DA CRS (Decision, p. 139). SDG&E contends that neither the finding of facts, conclusions of law nor ordering paragraphs of the Decision

[2] D.02-11-022, mimeo at p. 139.

reference an exemption for the Navy Load.[3] SDG&E thus seeks clarification of whether the Decision exempts the Navy Load from the components of the DA CRS. SDG&E requests modification of the findings of fact, conclusions of law and ordering paragraphs of the Decision to state whether the Navy Load receives an exemption and if so, to specify the exact components of the DA CRS from which the Navy Load is exempted.

II. FEA

The Federal Executive Agencies (FEA) filed a response on December 13, 2002. No other party responded to SDG&E's Petition.

FEA represents the interests of the U.S. Navy in this matter. FEA contends that SDG&E's Petition should be rejected both on procedural grounds and on substantive grounds. FEA contends that SDG&E has failed to comply with the requirements of Commission Rule 47,[4] and also has failed to show that the Commission's decision to exempt the subject load from the DA CRS was inappropriate.

Rule 47(b)states:

> "A petition for modification must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed (Rule 73). Allegations of new or changed facts must be supported by an appropriate declaration or affidavit."

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[3] SDG&E notes that the exemption of the Navy Load and the February 1, 2001 date of applicability for the DWR Power Charge did not appear in the proposed decision or any of the alternate decisions.

[4] Rules of Practice and Procedure, Title 20, California Code of Regulations.

FEA claims that SDG&E has not supported the factual allegations which it makes, has not submitted an affidavit, has not asked the Commission to take notice of any noticeable facts, and proposes no specific changes to the language of D.02-11-022. Accordingly, FEA claims that the Petition is procedurally defective and must fail on those grounds alone.

FEA also opposes SDG&E's Petition on substantive grounds. FEA argues that the Decision's adoption of the February 1, 2001 cut-off date for applicability of the DA CRS to customers was undoubtedly based on the idea that any customer taking bundled service after February 1, 2001 imposed an obligation on the utility, and contributed to its "net short" position. FEA argues that to whatever extent this presumption applies to customers in general, it is not applicable to Navy's 80 MW of load served through a contract with WAPA. As a basis for this contention, FEA cites to SDG&E's June 6, 2002 opening testimony of Jeffrey Trace (Exhibit No. 54), at Page 12 of Chapter II.

In that testimony, SDG&E's witness Trace (Exhibit 54), describes the circumstances that gave rise to the 80 MW of Navy Load. SDG&E's witness testified that DWR did not buy contract power to serve the 80 MW of Navy Load, because this load was subject to a separate special contract, and was expressly excluded from the SDG&E load requirements provided to DWR. SDG&E's witness thus proposed that the Navy Load should not be included as migrated DA load subject to the calculation of DA cost responsibility.

Thus, FEA argues that DWR charges are not applicable to the 80 MW Navy Load for which supplies were acquired separately by the Navy through a contract with WAPA, irrespective of whether a February 1, 2001 date is applicable to other customers. The 80 MW of load was never reported to DWR as a part of SDG&E's requirements, and as a result DWR did not incur any costs to serve it.

FEA notes that in Footnote 3 to its Petition, SDG&E first describes the 80 MW load served by WAPA and then states "the Navy took DA service for this load on August 1, 2001." FEA assumes that the August 1 reference is to the balance of Navy's load in excess of the 80 MW that was served under the WAPA contract. In any event, FEA contends that SDG&E's footnote reference has no bearing on the facts applicable to the 80 MW of load, or upon the substance of the Petition to Modify.

III. Discussion

We agree with FEA that SDG&E has failed to comply with the requirements of Rule 47. On that basis, SDG&E's Petition is procedurally defective. Nonetheless, we shall address the substantive merits of the Petition in the interests of promoting clarity of the Commission's order and to ensure that the order is appropriately supported by separately stated findings, conclusions, and ordering paragraphs. This clarification will help to ensure that customer billing for DA CRS is administered in a proper manner.

We conclude that, properly understood, there is no internal inconsistency between the treatment of the 80 MW of Navy Load and the remainder of the decision. We agree with SDG&E, however, that additional modification to the decision is warranted to clarify the proper treatment of the 80 MW capacity adjustment as it relates to the determination of DA CRS revenue requirements as well as to the DA CRS billing that is applicable to the Navy.

The first question raised by SDG&E is whether the language in D.02-11-022 regarding exclusion of Navy Load from the DA CRS applicable to SDG&E is internally inconsistent with the other provisions in the decision. In resolving this question, we note that two separate aspects are addressed in D.02-11-022 with respect to the determination of the DA CRS. One aspect has to do with the

modeling of the DA-in/DA-out scenarios based on changes in applicable DA load between July 1, 2001 and September 20, 2001. As prescribed in D.02-11-022, the modeling results are to be used to determine the aggregate cost responsibility applicable to DA customers as a whole. Specifically, D.02-11-022 intended to correct an error noted by SDG&E in the modeling assumptions that had previously been used by DWR/Navigant in its DA-in/DA-out scenarios.

As noted in the SDG&E/Trace testimony, DWR/Navigant included the 80 MW in its modeling of SDG&E net short requirements, despite the fact that SDG&E had informed DWR/Navigant that this load should not be included because the Navy was procuring the load through its own separate contract. Thus, as noted in SDG&E's testimony, in rerunning the July 1, 2001 pre-migration DA-in scenarios to compute the DA CRS requirements, a lower utility net short load should be used, removing the 80 MW of Navy Load. Because the computation of the aggregate DA CRS obligation is based on a comparison of changes in DA load between July 1 and September 20, 2001, it is appropriate to adjust the inputs to the modeling of DA load to reflect the removal of the 80 MW.

The second aspect of the DA CRS determination has to do with determining which customers pay the various elements, and based on what criteria. In this respect, D.02-11-022 directed that all DA customers that took bundled service on or after February 1, 2001 must be subject to DWR bond and power charges on a consistent basis. Accordingly, the relevant date for assessing individual customer responsibility for paying the DA CRS elements relating to DWR charges is based upon the status of the customer's load as of February 1, 2001. The relevant criterion for this assessment is whether the customer's load was subject to bundled utility service on or after February 1, 2001. For purposes of this determination, the question of what portion of the Navy's load was or was not served by DWR on or after July 1, 2001 is not relevant.

SDG&E points out that FEA was on bundled service as of February 1, 2001. Under the provisions of D.02-11-022, the Navy thus is obligated to pay the DA CRS on the same basis as other customers that meet that criterion. The 80 MW of load was not preexisting as load served by an Energy Service Provider (ESP) prior to February 1, 2001. Therefore the Navy cannot qualify for exemption from the DWR charges as a "continuous" DA customer based on the subsequent contract for 80 MW of load. Although the Navy procured power under the 80 MW independently of DWR, the power did not begin to flow under the special contract until after February 1, 2001. The first power under the contract began to flow on March 1, 2001, and then only at a 5 MW capacity level. Power did not begin flowing at the 80 MW capacity level until April 1, 2001. Thus, prior to being served by the special contract, the Navy's load was met through the provision of bundled utility service. For at least some period on and after February 1, 2001 up until it began to be served under the special contract, the Navy would have been subject to bundled procurement for meeting its load demand. To the extent that DWR procured the net short for SDG&E bundled load during the period prior to April 1, 2001, some bundled power would have flowed to the Navy.

Moreover, as SDG&E notes, the Navy did not become a DA customer until August 1, 2001. FEA, in its reply comments, asserts that the August 1, 2001 date presumably applied to its load served under the WAPA contract in excess of the 80 MW. Thus, FEA apparently concedes that the Navy is responsible for DA CRS, at least to the extent of its load in excess of the 80 MW under the special contract. Therefore, to exempt the Navy from paying DA CRS on the fraction of its total load represented by the 80 MW would require carving out that one component of the Navy's total load for exemption. Such segmentation of a customer's sources of capacity as a basis for determining the applicability of DA

CRS was not authorized in D.02-11-022. To adopt such an interpretation would be creating an additional special exception that would unfairly discriminate against other DA customers that are not permitted to segment their DA CRS obligation to receive a partial exemption in such a manner.

In D.02-11-022, we considered the arguments of various parties to "vintage" the DA CRS by prorating the percentage of time that individual customers took bundled service. We also considered arguments that DA customers on bundled service only for a short time period should be exempt from the DWR charges. For reasons set forth in D.02-11-022, we rejected those arguments, and applied a uniform DA CRS both for DWR bond and power charges irrespective of the specific fraction of time individual customers took bundled service.

In similar fashion, FEA has not justified why an exception to such treatment should be made just for the Navy, even though 80 MW of its load was subject to bundled service for a shorter period than for some other DA customers. We find it would be unduly discriminatory to single out the Navy for a special exclusion in preference to other DA customers in this regard.

Thus, while the 80 MW is properly excluded in computing the aggregate costs applicable to SDG&E for computing aggregate DA CRS revenue requirements (based on the relevant measurement date of July 1, 2001), the Navy, as an individual customer, is entitled to a unique exemption from payment of uniform DA CRS requirements (based on the relevant measurement date of February 1, 2001).

The FEA's interpretation of D.02-11-022 would require that the Commission grant an exemption that would also be inconsistent with Assembly Bill (AB) 117 (Stats. 2002, Ch. 838). As determined in D.02-11-022, all customers that took bundled service on or after February 1, 2001 must bear their fair share

of DWR costs, pursuant to AB 117. Under this adopted treatment, the Navy remains responsible for paying the appropriate DWR bond and power charges on the same basis as other customers, consistent with AB 117.

Apart from its obligations to pay the DWR bond and power charges, the Navy also still remains responsible for paying any competition transition charge (CTC) that would apply to DA customers, irrespective of whether DWR procured the power on their behalf. As explained in D.02-11-022, SDG&E already had charges in place to recover CTC prior to the issuance of that Decision. The CTC applies to all DA load, not just the incremental DA load that took bundled service subsequent to February 1, 2001. Accordingly, the Navy was presumably already paying the appropriate CTC, including any amounts applicable to the 80 MW, prior to the issuance of D.02-11-022. Consequently, the preexisting CTC payments applicable to the 80 MW of load are not changed as a result of D.02-11-022. In the interests of clarity, however, language shall be added to D.02-11-022, clarifying that the Navy continues to bear responsibility for any CTC that previously applied to it. The exemption from the DWR bond and power charges does not change this previously existing obligation on the part of the Navy to pay CTC.

In support of the clarifying language regarding the treatment of the 80 MW of load with respect to the DA CRS determination, appropriate findings of fact, conclusions of law, and ordering paragraphs should be added to D.02-11-022.

We shall revise the language relating to the 80 MW of Navy Load as set in Appendix A of this order. The italicized text represents new dicta that are to be added in order to clarify the intent and proper application of the adjustment for the 80 MW of Navy Load.

IV. Comments on the ALJ Draft Decision

The Draft Decision of Administrative Law Judge (ALJ) Thomas Pulsifer in this matter was filed and served on parties on January 28, 2003 in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments on the Draft Decision were filed on February 18, 2003, and reply comments were filed on March 2, 2003. After receipt and review of comments, a revised draft decision (RDD) was mailed to parties on March 2, 2003, with the opportunity for comment. The RDD differed from the initial draft decision in that the latter would exempt the Navy from paying a DA CRS on the 80 MW component of its power bill. Comments on the RDD were filed on March 10, 2003.

In its comments on the RDD, SDG&E included a discussion of the effects on other DA customers resulting from exempting the 80 MW of Navy load from the DA CRS, as well as the effects on the expected payback period for bundled customers. As a basis for this discussion, SDG&E referenced the latest modeling results performed by DWR/Navigant.

On March 12, 2003, FEA filed a motion to strike the portions of the SDG&E comments on the RDD relating to the discussion of modeling effects of the exempting the 80 MW of Navy load. FEA argued that this portion of SDG&E's comments consisted entirely of new factual information that had not yet been entered into evidence. FEA noted that Commission Rule 77.3 is designed to prevent the problems of relying on untested factual material that had not been entered into evidence before the Commission.

In view of the FEA motion, the assigned ALJ issued a ruling dated March 25, 2003, providing parties the opportunity to comment on the data provided by DWR/Navigant regarding the modeling effects of exempting the 80

MW of Navy load from the DA CRS. Parties filed responsive comments on April 1, 2003.

In its comments, SDG&E states that by exempting the Navy load from the DA CRS, the uncapped obligation absorbed by the remaining DA customers would increase by as much as approximately 50% and that the payback period for the DA CRS undercollection would be extended from 2008 to 2013. FEA states in its comments that although the exemption of the 80 MW of Navy load extends the payback period, the exemption also produces a payback period for SDG&E that is more in line with that of PG&E and SCE. On the other hand, requiring the Navy to pay a DA CRS on the 80 MW produces a payback period for SDG&E which is between 34% and 46% shorter than for the other two utilities.

Upon review of parties' comments, we find no dispute concerning the numerical validity of the modeling results reported by DWR/Navigant. SDG&E and FEA differ only in their particular focus on the significance of the modeling results. SDG&E focuses on how exempting the 80 MW of Navy load will increase the DA CRS obligation absorbed by remaining DA customers and extend the time for payback. FEA, on the other hand, focuses on how excluding the 80 MW of Navy load will keep SDG&E more closely aligned with PG&E and SCE in terms of DA CRS payback period. In any event, it is not necessary to determine the precise modeling impacts of the 80 MW as a basis to determine the appropriate treatment of the Navy load which is the subject of this decision. We find that the DWR/Navigant modeling results provide no basis for deciding the

appropriate DA CRS treatment of the 80 MW.[5] The appropriate treatment should be based on the principles we have discussed above. Accordingly, we uphold our findings that the 80 MW of Navy load should bear its fair share of DWR bond and power charges for purposes of the DA CRS on the same basis as other DA load.

Since the parties have now been provided notice and opportunity to comment on the effects of treatment of the 80 MW of Navy load with respect to the DA CRS in their April 1, 2003, the objections raised by FEA in its motion to strike SDG&E's comments on the modeling effects of the 80 MW are moot.

FEA also moved to strike portions of SDG&E's comments seeking "clarification that the Navy should be exempt from the bond charge." FEA argues that this portion of the comments does not identify any factual, legal, or technical error in the RDD as required by Rule 77.3. Moreover, FEA argues that the RDD is already clear that no bond charges apply to the 80 MW, and no clarification is needed.

We find no warrant to strike comments of SDG&E relating to the claimed need for clarification as to the applicability of the bond charge to the 80 MW. Comments relating to the clarity of a decision are within the scope of permissible comments. Clarity in an order is necessary for parties to comply correctly with its requirements and for any necessary enforcement actions. Mere disagreement over whether the language in the order is sufficiently clear, however, is not a basis to strike. Thus, we deny the motion to strike SDG&E's comments.

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[5] The DA CRS modeling effects relating to the treatment of the 80 MW of Navy load is being examined in the DA CRS cap reassessment phase of this docket. We make no prejudgment here concerning the validity of the DA CRS modeling results.

V. Conclusion

Accordingly, we grant SDG&E's Petition to Modify to the extent that we adopt the modifications and clarifications as set forth above. The dicta, findings of fact, conclusions of law, and ordering paragraphs in D.02-11-022 are accordingly modified as adopted below.

VI. Rehearing and Judicial Review

This decision construes, applies, implements, and interprets the provisions of AB 1X (Chapter 4 of the Statutes of 2001-02 First Extraordinary Session). Therefore, Pub. Util. Code § 1731(c) (applications for rehearing are due within 10 days after the date issuance of the order or decision) and Pub. Util. Code § 1768 (procedures applicable to judicial review) are applicable.

VII. Assignment of Proceeding

Carl Wood and Geoffrey Brown are the Assigned Commissioners and Thomas Pulsifer is the assigned ALJ in this proceeding.

Findings of Fact

1. SDG&E has failed to comply with the requirements of Rule 47, and on that basis, the Petition is procedurally defective.

2. D.02-11-022 intended to correct an error noted by SDG&E in the modeling of DA load used by DWR/Navigant in its DA-in/DA-out scenarios.

3. D.02-11-022 did not intend to carve out a special exemption from DA CRS for the Navy for purposes of applying the starting point for being covered under the payment.

4. Because it was on bundled service as of February 1, 2001, under the provisions of D.02-11-022, the Navy is obligated to pay the DA CRS on the same basis as other customers that meet that criterion.

5. Because the 80 MW of load was not preexisting as load served by an ESP prior to February 1, 2001, the Navy cannot qualify for exemption from the DWR charges as a "continuous" DA customer based on the 80 MW of load.

6. The first power under the Navy's special contract did not begin to flow until March 1, 2001, and then only for 5 MW of power. Power delivered under the contract did not begin flowing at the 80 MW capacity level until April 1, 2001.

Conclusions of Law

1. Although the Petition to Modify is procedurally defective, it should still be considered on its merits in the interests of clarifying D.02-11-022, and ensuring that customers are properly billed for DA CRS.

2. D.02-11-022 is not internally inconsistent, but warrants modification to incorporate additional clarifying language regarding the treatment of the 80 MW of Navy's load as it relates to (1) the modeling of aggregate DA CRS costs on a DA-in/DA-out basis, and (2) the applicability of the Navy's obligation for payment of the DWR bond and power charges.

3. Consistent with the D.02-11-022 requirements for determining which customers are responsible for making payments, the Navy meets the criterion for paying DWR bond and power charges since it took bundled service on or after February 1, 2001.

4. Consistent with the D.02-11-022 requirements for determining the aggregate DA CRS revenue requirements based on a comparison of DA load at July 1 versus September 20, 2001, the Decision appropriately directs that the 80 MW of Navy Load be excluded.

5. It is not necessary to determine the precise modeling impacts of the 80 MW as a basis to decide the appropriate DA CRS treatment of the Navy load.

6. Since the parties have been provided notice and opportunity to comment on the effects of treatment of the 80 MW of Navy load with respect to the DA CRS, FEA's motion to strike SDG&E's comments on the modeling effects of the 80 MW is moot.

7. The Petition to Modify seeking clarification of D.02-11-022 should be granted to the extent set forth below.

O R D E R

IT IS ORDERED that:

1. The Petition to Modify seeking clarification of Decision (D.) 02-11-022 is hereby granted to the extent set forth below.

2. The dicta on page 139, Section XVI-J of D.02-11-022 relating to the 80 megawatts of United States Navy load adjustment is hereby superseded by the text set forth in Appendix A, hereto.

3. The additional findings of fact and conclusions of law set forth above are also incorporated by reference into D.02-11-022.

4. The Federal Executive Agencies' motion is denied to the extent it seeks to strike San Diego Gas & Electric Company's comments relating to the clarity of the proposed decision.

This order is effective today.

Dated _____, at San Francisco, California.

Appendix A

The following text shall replace and supersede the text in Section XVI-J that appears in Decision 02-11-022, on page 139 thereof.

— Beginning of Revised Text:

J. Adjustment for 80 MW of U.S. Navy Load

The U.S. Navy began to receive power through a special contract with an energy supplier obtained via the Western Area Power Administration in March 2001 and this load was not included in the SDG&E requirements provided to DWR.[6] DWR therefore did not procure for this 80 MW of U.S. Navy's load and it should not be *included for purposes of modeling the net short load* subject to the DA CRS *aggregate share of costs* applicable to SDG&E.[7] These facts were not disputed during the proceeding.

Yet, as noted by SDG&E Witness Trace, DWR erroneously included the 80 MW of Navy as SDG&E migrated DA load in its illustrative scenario modeling of the applicable share of DA CRS costs applicable to SDG&E. Accordingly, we shall direct that this 80 MW be excluded from *July 1, 2001 pre-migration net short load used in* the DA CRS *modeling runs that will be convened to compute and implement the* applicable *share of DA CRS costs applicable* to SDG&E.

The correction of the modeling error for the 80 MW of load does not relieve the Navy, however, from paying its applicable DA CRS obligation on the same basis as other customers that took bundled service on or after February 1, 2001. Even though the Navy procured a portion of its load from sources other than DWR at a date subsequent to February 1, 2001, that fact does not justify granting the Navy a special exemption in

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[6] Exh. 54, Ch II, p. 12.

[7] *Id.*

preference over all other DA customers. The methodology we have adopted for applying the DA CRS does not incorporate any vintaging of individual customer accounts, differentiating or exempting them from DA CRS based on the specific fraction of the time that the customer took bundled service on or after February 1, 2001, or based on the fraction of load that may have been served by sources other than DWR.

— End of Revised Text —

(END OF APPENDIX A)